CF0000061242

CrA 68/96

(2)

XII-189/(Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench (Criminal)

No. ...3113/49... Name ...ભાણુ રામ...

Father's name ...લુદુરામ સાલિગ બાકુલા આના સિધવા તહ૦ ગઢાદે...

Residence ...જિલ્લા કચ્છ(ભુજ)... Age ...૬૬ વર્ષ...

Sentenced to ...આજીવન કારાવાસ છ૦... On ...2-11-95...

Under section ...૩૭૬ (૨) (જી) આઇ પી સી... by ...અધિક સેશન્સ જજશ્રી ભુજ કચ્છ (ભુ.૪.)...

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ...2/12/95...

2 Date on which copy received ...15/12/95...

3 Date on which Appeal sent ...12/95...

4 Whether the prisoner wishes to be represented or ~~not~~ - Yes / No

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No. ...3113/49... Name ...ભાણુ રામ લુદુ રામ...

Confined in ...કેન્દ્રીય... Jail ...ભુજ (કચ્છ)...

No. ...1024.../1000/- Dated ... 199 5 ... 19/12/95 ...

Forwarded to the ~~CHIEF JUDICIAL~~ MAGISTRATE ...અધિક સેશન્સ જજશ્રી ભુજ કચ્છ... together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

૨૦ ૦૧૭૦૧- વિગિન ૪૨ વિગિ
૧૯૨ ૪૩૨૦૧ ૩૦૬ 2351537

Superintendent
...કેન્દ્રીય Jail (ભુ.કચ્છ)...

Date of receipt in ... office ...

Date of receipt record to accompany the ...

Memo of Appeal to the Appellate court ...

No ...૯... Dated ...

Forwarded to the ...

Date of receipt in Appellate Court ...

High Court of Madhya Pradesh
JABALPUR
5 JAN 1996
Reg. No. 17
Receipt Clerk
Scrutiny Assistant

(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No.68/96 सन् **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

25-9-2006

Shri Akhil Mishra, Advocate for the appellant.

Shri U.K.S. Chandel, Panel Lawyer for the State/respondent.

Oral Judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 2nd December, 1995 passed by the Additional Sessions Judge, Dhamtari, in Sessions Trial No.235/95 whereby learned Additional Sessions Jude after holding the accused/appellant guilty for commission of offence under Sections 302 and 201 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one year; and to undergo R.I. for 2 years, respectively. Both the sentences directed to run concurrently.

Case of the prosecution, in brief, was that one girl child namely Nilu, daughter of Ram Kumar (PW-2) was missing since 17-2-95, therefore, Ram Kumar lodged a missing report of Nilu in the Police Station Sihava on 18-2-95, same was entered in the Rojnamcha Sana vide Ex.-P/15-C. A merg intimation (Ex.-P/16) was lodged by Head Constable Changulal on 19-2-95 on the information given by Mahesh Kumar that on 18-2-95, in the evening, at about 8-9 p.m., PW-7 Shri Gadarai and PW-8 Janmejai informed him that today they went for grazing of the cattle, at about 11 a.m. they saw that in the agricultural field of Lachinder green colour frock of a girl was lying which was stained with blood and one head was also lying near the bush of Babool, on which at about 10 p.m. in the night, Suresh Chandra Sahu, Doordeshi,

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Radhe Kaushik and Lakhanlal Soni went to the place and saw that green colour frock of some girl was lying and the head was also lying near the Babool bush. On seeing the frock and the head, Lakhanlal (PW-13), grandfather of Nilu identified the frock and the head to be of Nilu, who was missing since 17-2-95. Lakhanlal started weeping.

Receiving this merg intimation, the Investigating Officer left for place of occurrence, after giving notice Ex.-P/11 to the Panchas, prepared inquest report (Ex.-P/12) of the head of Nilu. The site plan (Ex.-P/13) of the house of the accused and Ex.-P/14 of the place of occurrence where frock and the head were found, were prepared. Dehati Nalishi (Ex.-P/18) was given by C.S. Netam and based on that F.I.R. (Ex.-P/17) was registered. Seized head, green colour frock, two pieces of bone and hairs were sent for examination to the Primary Health Centre, Belargaon where after medical examination, Dr. S.K. Nag (PW-14) gave a report (Ex.-P/22) on 21-2-95, he opined that cause of death cannot be given, head and two pieces of separated bone preserved for expert opinion and it be sent to the Medicolegal Department, Medical College, Raipur. Dr. D.C. Jain (PW-17), Professor and HoD, Forensic Medicines, Medical College, Raipur, further examined the head & bones and he gave the reports Ex.-P/24 and Ex.-P/25. On 21-3-95, he opined that head of the deceased was chopped by sharp cutting weapon like chopper, sword, knife etc., cause of death was syncope and death was homicidal in nature. The duration of death was between 5-10 days. He also opined that he examined roasted pieces of lungs with trachea, heart and a part of liver and same were identified to be of human being. On 26-2-95, memorandum (Ex.-P/2) of the accused was recorded. On 23-2-95, some hairs stained with blood and one sealed packet were taken into possession under Ex.-P/5 from the place of occurrence. On 24-2-95, a

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

search was made in the house of the accused, the following articles were taken into possession under Ex.-P/6:-

(1) one wooden Pata
(2) one bush shirt,
(3) one iron knife,
(4) one sickle,
(5) one axe stained with blood,
(6) one white polythene bag stained with blood,
(7) one another axe,
(8) one piece of Sari,
(9) one baniyan,

On 20-2-95, plain soil, blood stained soil, one green readymade frock and pieces of bone were taken into possession from the place of occurrence under Ex.-P/4. One polythene bag black colour containing black roasted piece of heart, which was roasted in the fire, a hollow gourd of pumpkin in which ½ kg of rice and 4 coins and a polythene containing 5 pieces of lemon were taken into possession under Ex.-P/7. On 26-2-95, plain soil and blood stained soil were taken into possession from the place of occurrence under Ex.-P/8. Under Ex.-P/9 pieces of nail of the accused were taken into possession. The recovered articles were sent for chemical examination to the Forensic Science Laboratory, Raipur, from where report Ex.-P/21 was received.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Dhamtari, who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge received the case on transfer for trial.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish the charge against the accused examined 23 witnesses. Learned Sessions Judge recorded the statement of the accused under Section 313 of the Cr.P.C. in which either he pleaded innocence or denied material appearing against him in the prosecution evidence and stated that he is innocent and has been implicated in a false case. Learned Additional Sessions Judge after hearing the arguments of counsel for the accused and Additional Public Prosecutor, convicted and sentenced him as mentioned in earlier part of this judgment.

We have heard Shri Akhil Mishra, learned counsel for the accused/ appellant, appointed by the High Court Legal Aid Committee and Shri U.K.S. Chandel, Panel Lawyer for the State/respondent.

At the outset, learned counsel for the appellant submitted that the prosecution has not been able to bring on record any evidence which connects the accused with the murder of Nilu.

On the other hand, learned counsel for the state/respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have examined the record of the trial Court and the judgment of the trial Court. It is admitted fact that in this case there is no direct or ocular evidence regarding involvement of the accused/appellant in the crime in question. The whole case rests on the circumstantial evidence and as per the settled law in order to convict an accused based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** held that:

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आदेश पत्रक

मामला क्रमांक ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

In a case based on the circumstantial evidence if the prosecution establishes a motive of the accused behind the crime, same is of vital importance. In this case, father of the deceased Ram Kumar has been examined as PW-2. In his evidence, he has not stated anything against the accused, rather he has stated that Nathuram was residing in the Indira Aawas, Ghatula all alone. Nothing happened between him and Nathuram. Similarly, mother of the deceased and wife of Ram Kumar, namely Deepti has been examined as PW-3. She has also not stated anything against the accused that he was having any grudge or animosity against the parents of the deceased.

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution has tried to establish the crime against the accused/appellant on the basis of following circumstances:-

(1) axe, iron knife, sickle and one wooden Pata were recovered and same were found stained with blood,

(2) in polythene bag black roasted piece of heart, which was roasted on fire, was seized from the house of the accused under Ex.-P/7,

(3) green frock of the deceased and head along with hair of the deceased were seized from the place of occurrence under Ex.-P/4,

(4) the accused gave memorandum Ex.-P/2.

As far as first circumstance is concerned, it is true that the axe, sickle, iron knife, wooden Pata were taken into possession from the house of the accused under Ex.-P/6 on 24-2-95, but such articles are normally found in the house of every person in the village side. As per the F.S.L. report (Ex.-P/21), blood was found on the wooden Pata, knife & sickle and nails of the accused were found stained with blood, but there is no report that the blood which was found on these articles was human blood and same was of the blood group of the deceased, without which it is difficult to connect the accused with the murder of the deceased based on above recoveries.

As far as recovery of roasted piece of flesh like heart under Ex.-P/7 is concerned, same was sent for examination to the Primary Health Centre, Belargaon from where it was sent to the Medical College, Raipur, same was examined by Dr. D.C. Jain, (PW-17), Professor & HoD of the Department of Forensic Medicine, Medical College, Raipur and he prepared the report Ex.-

(पीछे देखिये)

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

P/25 that roasted pieces of lung with trachea, heart and a part of liver were identified to be of human being. But in the first instance, there is nothing on record which establishes that the said pieces were of the body of the deceased. Merely, based on this circumstance only which is a very weak type of evidence it is very difficult to record a finding that the said pieces of lungs, trachea, heart and a part of liver was of the body of the deceased, as there is no other evidence put-forward by the prosecution in order to establish that the accused was in any manner seen with the deceased or the accused was seen by anybody nearby the place of occurrence i.e. the agricultural field where the frock and head of the deceased were found.

As far as recovery of green frock of the deceased and piece of head from the place of occurrence is concerned, based on this recovery also, the prosecution has not been able to connect the accused with the crime in question for the reason that neither these articles were recovered at the instance of the accused nor there is any evidence to show the presence of the accused nearby the place of occurrence from where these articles were recovered, or any foot marks or any circumstance has been established by the prosecution regarding the presence of the accused at the place of occurrence. Therefore, merely on the basis of above recoveries, unless same connect with the presence of the accused, it cannot be made basis for connecting the accused with the murder of the deceased.

As far as memorandum Ex.-P/2 is concerned, it is also of no help to the prosecution for the reason that this memorandum was recorded on 26-2-95 whereas, regarding piece of head and frock of the deceased were already known to the villagers on 19-2-95 based on that merg intimation and Dehati Nalishi were also recorded. These items were taken into possession on 20-2-1995 prior to memorandum Ex.-P/2 given by the accused. Therefore, no

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

significance or importance can be attached to the memorandum Ex.-P/2 that at the instance of the accused these frock and piece of head of the deceased were recovered or place of occurrence was known to the villagers, as such, based on memorandum Ex.-P/2, the accused cannot be connected with the crime in question.

For the foregoing reasons, we are of the considered opinion that the prosecution has not been able to establish involvement of the accused/ appellant in the crime in question and the circumstantial evidence adduced by the prosecution has not stood up to the test laid down by the Apex Court in the above judgment for connecting the accused with the crime in question. In other words, the prosecution has not been able to bring on record clinching legal circumstantial evidence through which an irresistible inference can be drawn that the accused was only person who was author of the crime in question and there is no possibility of any other person to commit the said crime. Therefore, finding of the trial Court cannot be sustained and same is liable to be set aside.

In the result, the appeal of the accused/appellant succeeds. Conviction and sentences imposed upon the accused/appellant under Sections 302 and 201 of the I.P.C. are set aside and he is acquitted of the said charge. The accused/appellant be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K. Shrivatava
Judge

Barve

(पीछे देखिये)